

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAVID A. KING, *et al.*,

Plaintiffs,

v.

TIMBER RIDGE TRADING &
MANUFACTURING COMPANY,

Defendant.

Case No. 2:19-cv-01617-RAJ

ORDER

I. INTRODUCTION

This matter comes before the Court on Defendant's Motion to Strike Plaintiffs' Second Amended Complaint (Dkt. # 22), Plaintiffs' Motion for Leave to File Second Amended Complaint (Dkt. # 19), Defendant's Motion to Dismiss (Dkt. # 13), and Plaintiffs' Stipulated Motion for Leave to File Supplemental Exhibit (Dkt. # 28). For the reasons set forth below, Defendant's Motion to Strike (Dkt. # 22) is **GRANTED**, Plaintiffs' Motion for Leave to File Second Amended Complaint (Dkt. # 19) is **GRANTED**, and Defendant's Motion to Dismiss (Dkt. # 13) and Plaintiffs' Motion to File a Supplemental Exhibit (Dkt. # 28) are **DENIED** as moot.

II. BACKGROUND

On October 8, 2019, David A. King and Maryann E. Voisinet ("Plaintiffs") filed a complaint in this Court for claims relating to an injury that Mr. King sustained while using a wood-cutting blade. Dkt. # 1. Plaintiffs named Timber Ridge Trading &

1 instructs that, to the extent Plaintiffs remain unrepresented, this Court's meet and confer
2 requirement also extends to them. That is, before the filing of any motion (except for
3 temporary restraining orders), Plaintiffs and Defendant shall meet and confer as described
4 in this Court's standing order. The Court will set aside its preference for in-person
5 meetings here; conferences over email, telephone, other media will do.

6 Because Plaintiffs did not comply with Rule 15 when amending their complaint,
7 Defendant's Motion to Strike is **GRANTED**, and the 12/2 SAC (Dkt. # 16) is
8 **STRICKEN**.

9 **B. Motion for Leave to Amend**

10 Plaintiffs now seek leave to file a second amended complaint. Dkt. # 19. Under
11 Rule 15(a), courts "should freely give leave when justice so requires." Fed. R. Civ. P.
12 15(a)(2). "In exercising this discretion, a court must be guided by the underlying purpose
13 of Rule 15 to facilitate a decision on the merits, rather than on the pleadings or
14 technicalities." *Roth v. Garcia Marquez*, 942 F.2d 617, 628 (9th Cir. 1991); *United*
15 *States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981). Further, the policy of favoring
16 amendments to pleadings should be applied with "extreme liberality." *DCD Programs,*
17 *Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987). "This policy is applied even more
18 liberally to pro se litigants." *Eldridge v. Block*, 832 F.2d 1132, 1135 (9th Cir. 1987).

19 Against this extremely liberal standard, courts may deny leave to amend after
20 considering "the presence of any of four factors: bad faith, undue delay, prejudice to the
21 opposing party, and/or futility." *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d
22 708, 712 (9th Cir. 2001). But "[n]ot all of the factors merit equal weight . . . it is the
23 consideration of prejudice to the opposing party that carries the greatest weight."
24 *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). "Absent
25 prejudice, or a strong showing of any of the remaining [] factors, there exists a
26 presumption under Rule 15(a) in favor of granting leave to amend." *Id.* The party
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28

1 opposing amendment bears the heavy burden of overcoming this presumption. *DCD*
2 *Programs*, 833 F.2d at 187.

3 The first three factors—chief among them, lack of prejudice to Defendant—fall in
4 Plaintiffs’ favor. There is no evidence that Plaintiffs seek leave in bad faith. Granting
5 leave to amend will also not result in undue delay as the parties are still at the pleadings
6 stage and have not even started discovery. And Defendant will not be prejudiced. It will
7 be free to attack the newly amended complaint. Because Defendant objected to personal
8 jurisdiction in its first motion to dismiss, it has preserved that defense for a future motion
9 if it chooses to file one. Fed. R. Civ. P. 12(h)(1). What is more, Defendant has been on
10 notice of Plaintiffs’ amendments since at least December 2, 2019, when Plaintiffs
11 incorrectly filed the 12/2 SAC. Dkt. ## 15, 16.

12 Defendant does not argue otherwise but rather contends that amendment would be
13 futile. *See* Dkt. # 23 at 2-5. It says that the Proposed SAC does not correct any of the
14 personal jurisdiction pleading deficiencies of the FAC. *Id.* That may well be true, but
15 that is better decided on a proper motion to dismiss not a motion for leave to amend.

16 Here, Plaintiffs have submitted two “second amended complaints” to the Court,
17 both the 12/2 SAC and the Proposed SAC. As Defendant observes, it is not immediately
18 clear how these versions are different, much less how they differ from the FAC. Dkt. #23
19 at 5-6. Naturally, Defendant has responded by challenging personal jurisdiction in both
20 its Motion to Dismiss the FAC and its Response to Plaintiffs’ Motion for Leave to File a
21 Second Amended Complaint. Granting leave to amend will provide much needed clarity.
22 It will allow Defendant to target a single, operative complaint and will prevent the Court
23 from deciding the personal jurisdiction issue in piecemeal.

24 In sum, the Court will not break from the circuit’s preference for granting leave to
25 amend. Granting leave here will not reward bad faith and will not cause undue delay or
26 prejudice to Defendant. For these reasons, Plaintiffs’ Motion for Leave to Amend is,
27 **GRANTED.** The Clerk of the Court will file the proposed amended complaint lodged

1 with the Court (Dkt. # 19-4). Also, Plaintiffs are ordered to submit a redlined version of
2 the Second Amended Complaint to Defendant and to the Court at
3 jonesorders@wawd.uscourts.gov. This redlined version must compare the First
4 Amended Complaint (Dkt. # 6) to the Second Amended Complaint (Dkt. # 19-4) and
5 show all edits made. Plaintiffs must submit that redlined version within one week of this
6 Order.

7 **C. Motion to Dismiss the FAC and Motion for Leave to File a**
8 **Supplemental Exhibit**

9 Because the Court has granted leave to amend and has ordered the Clerk of the
10 Court to file Plaintiffs' Second Amended Complaint, Defendant's Motion to Dismiss the
11 FAC is now moot. Dkt. # 13. So too is Plaintiffs' Motion for Leave to File a
12 Supplemental Exhibit in support of its response to Defendant's Motion to Dismiss. Dkt.
13 # 28.

14 For these reasons, Defendant's Motion to Dismiss (Dkt. # 13) and Plaintiffs'
15 Motion for Leave to File a Supplemental Exhibit (Dkt. # 28) are **DENIED** as moot.

16 **IV. CONCLUSION**

17 For the reasons stated above, the Court **GRANTS** Defendant's Motion to Strike
18 (Dkt. # 22) and Plaintiffs' Motion for Leave to File Second Amended Complaint (Dkt.
19 # 19). The Court **DENIES** as moot Defendant's Motion to Dismiss (Dkt. # 13) and
20 Plaintiffs' Motion to File a Supplemental Exhibit (Dkt. # 28). The Clerk of the Court will
21 file the proposed amended complaint lodged with the Court (Dkt. # 19-4).

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23 DATED this 21st day of April, 2020.

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26 The Honorable Richard A. Jones
27 United States District Judge